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Senate

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. LEAHY).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, our rock and fortress, You put the mountains in place and bring silence to roaring waves. You are a strong tower where we find safety. We ask You for peace on Earth and good will to humanity. Lord, strengthen our faith, and forgive us for doubting Your power and providence. Thank You for this great land and for the many freedoms we sometimes take for granted. We appreciate Your faithfulness and Your mercies that are new each day.

Today, lead our lawmakers so that Your Name will be honored. Protect them from hidden dangers, and sustain them through the lengthening shadows.

We pray in Your wonderful Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Dana M. Douglas, of Louisiana, to be United States Circuit Judge for the Fifth Circuit.

Mr. WARNOCK. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WARNOCK). Without objection, it is so ordered.

RECOGNITION OF THE MAJORITY LEADER

The majority leader is recognized.

RECOGNIZING THE SYRACUSE ORANGE MEN'S SOCCER TEAM

Mr. SCHUMER. Mr. President, before I begin, I want to extend a massive—massive—congratulations to the Syracuse Orange men's soccer team for winning the NCAA College Cup national championship last night in a heart-stopping 7-to-6 victory, after penalty kicks. A big congrats to Coach McIntyre, all the amazing players, and the staff on a phenomenal accomplishment—the first in Syracuse history. Go Orange.

GOVERNMENT FUNDING

Mr. President, now on the omnibus, a more serious subject, negotiations for a yearlong omnibus agreement move forward. There is a lot of work left to do, but we are optimistic that if we preserve the good faith we have seen so far, we will get there. I remain hopeful because despite disagreements about the ultimate package, there is little disagreement that an omnibus is by far

the best solution for funding the government. Still, we are going to need a little more time beyond this week to get an omnibus done.

To avoid a shutdown this Friday, the Senate should be ready to pass a 1-week CR by the end of this week to give negotiators more time to finish an agreement by the holidays. The House is set to begin consideration of a weeklong CR today, and after all the progress made towards an omnibus agreement, I hope nobody here in the Senate stands in the way of getting a 1-week CR passed quickly, through consent if needed.

Again, an omnibus is the best option—the most responsible option—for funding the government in the next fiscal year. It will ensure that the Federal Government has all the resources necessary to serve the public at full capacity. It will make sure our troops in uniform are taken care of. And I expect an omnibus will contain priorities both sides want to see passed into law, including more funding for Ukraine and the Electoral Count Act, which my colleagues in the Rules Committee have done great work on. It will be great to get that done.

After all the work we have done this year to pass important new bills, like the PACT Act and the CHIPS and Science Act and so much more, a CR into next year could prevent the investment secured in those bills from going out the door. The vast majority of us don't want to go down that road. So, again, the best option—the most responsible option—is to proceed toward an omnibus, even if it won't contain everything both sides want.

NOMINATION OF ARUN SUBRAMANIAN

Mr. President, now on judges, later this morning it will be my honor to come before the Senate Judiciary Committee to introduce an exceptional public servant, Arun Subramanian, whom President Biden nominated on my urging to serve as a district judge for the Southern District of New York.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Here on the floor, Arun Subramanian is one of the few South Asians who are on the bench—we need more—but he will pave the way. And it is my intention to continue to support South Asians to come to the bench.

NOMINATION OF DANA M. DOUGLAS

Mr. President, here on the floor, we will also proceed with the confirmation of Dana Douglas to serve as circuit court judge for the Fifth District, which covers Texas, Louisiana, and Mississippi.

Judge Douglas's confirmation today will be significant for a few reasons. For one, Judge Douglas will be the 28th—the 28th—circuit court judge this majority confirms in the last 2 years. Of the many votes we take in this Chamber, confirming circuit court judges ranks near the top in importance. The lion's share of all Federal cases, after all, are decided at the circuit court level.

Judge Douglas is also significant because, after her confirmation, the Senate will have confirmed 11 Black women to serve as circuit court judges. This is a record for any single session of Congress. Before President Biden, only eight such nominees had been confirmed by this Chamber. So this is truly a historic shift in the court's composition.

This representation matters enormously. The health of our Federal courts hangs on judges who will both apply the law correctly while also earning Americans' trust in the first place. The more our courts look like the country at large—the more languages and backgrounds and specialties we have on the bench—the more likely the trust endures. That is more important than ever, given the recent disturbing decisions handed down by the Supreme Court.

That is why judges like Dana Douglas matter. That is why circuit court judges matter. And we are going to keep working for the rest of this year and beyond to bring diversity and balance back to our courts.

RESPECT FOR MARRIAGE ACT

Mr. President, on the White House signing ceremony, finally, this morning I want to note my tie. I am wearing it today for two reasons. First, it is a constant reminder of one of the happiest moments of my life, the day my daughter got married. And, second, I am wearing it because, later this afternoon, President Biden will sign the Respect for Marriage Act into law.

For many Americans in same-sex marriages—or who one day wish to marry their partner—today is a day of relief and of jubilation. By passing this law, we are sending a message to LGBTQ Americans everywhere: You, too, deserve dignity and equality under the law.

Few bills have hit home for Members on the Hill quite like this one. Marriage equality is not just the right thing to do for America, it is personal for so many of us, our staffs, and our families.

My daughter and her wife are beautifully—praise God—expecting their first child, my third grandchild, next spring, and I want them to raise their child with all the love and security that every child deserves. Thanks to the dogged work of many of my colleagues, my grandchild will live in a world that will respect and honor their mothers' marriage.

And, look, nothing about the Respect for Marriage Act was inevitable. On the contrary, it took a lot of faith and a bit of risk taking to reach this point. When my colleagues came and asked me for a delay, I made that choice, and it was because they believed—and I believed—that the bipartisan process could indeed work.

It wasn't a decision we took lightly, but today that gamble is paying off. So I thank my colleagues on both sides of the aisle for making today's signing possible, and I thank my friend Senator FEINSTEIN, who originally authored this landmark bill. Because of them and because of the millions of Americans out there who pushed for change, history will be made at the White House later today.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF THE MINORITY LEADER

The Republican leader is recognized.

UKRAINE

Mr. MCCONNELL. Mr. President, Senate Republicans have spent, literally, months focused on the need for a strong bipartisan National Defense Authorization Act, as well as robust funding for our Armed Forces. Defending our homeland, deterring future threats, and supporting our allies and partners should not be last-minute, low priorities. They are fundamental duties if we want to remain the strongest power in the world, and investing in strength today protects our country, our servicemembers, and the American taxpayer tomorrow.

Let's take, for example, Ukraine. For nearly a year now, the free people of a sovereign nation have stood firm and battled against brutal and lawless aggression. The Ukrainians' brave stand was made possible, in part, because the United States and a number of other countries have realized that supporting their self-defense directly serves our own interests.

Europe together constitutes America's largest trading partner. Instability in Europe poses a direct threat to countless American producers who sell to our friends across the Atlantic. Further, huge disruptions to European markets would only add to the inflationary challenges that the Democrats' spending has caused us already here at home.

What is more, a successful Russian invasion would embolden the entire club of anti-American thug regimes to take bolder and more brazen steps toward further conflict, including direct threats to American lives.

Every day Russia spends on the back foot in Ukraine degrades its own ability to wage further wars and dramatically changes the cost-benefit calculus for others who might contemplate similar violence.

Continuing support for Ukraine is the popular mainstream view that stretches across the ideological spectrum.

On my side of the aisle, for example, the former Director of National Intelligence, John Ratcliffe, said recently that supporting Ukraine "fully and completely" is in the best interest of the United States.

The top foreign policy expert at the Heritage Foundation, James Carafano, has spoken out forcefully about the need for continued military assistance, and so has former Secretary of State Pompeo, former Vice President Pence, and virtually every other leading national security official from the previous administration.

Now, while the conflict has exposed serious weaknesses in Russia's ability to wage a conventional war, it has also exposed shortcomings in the West, particularly with our defense industrial bases.

Our European friends who had treated themselves to holidays from history after the Cold War, who presumed a new normal of stability and security and shifted spending disproportionately into domestic programs, have received a harsh—harsh—wake-up call. They are rushing to reinvest more in their own defenses. Some politicians here in America fell victim to the same lullaby.

Now, fortunately, supplying the specific kinds of American armaments that Ukraine needs does not cut our readiness in other important regions, such as the Pacific. China and its neighbors are watching the conflict in Ukraine closely, and the CCP would be delighted if Ukraine fell to Russia.

But the long lead times to replenish what we are sending still provide us with a sober reminder. We know, for a fact, that the world's foremost military and economic superpower can and should both produce all the capabilities that we need for ourselves and serve as freedom's arsenal for our friends at the same time. We just need to organize our resources and make critical, overdue investments in our defense industrial capacity.

That is why the National Defense Authorization Act we will take up soon provides multiyear procurement authority for longer term certainty, planning, and efficiency. It authorizes significant investments in modernizing our forces and capabilities.

But following through on these promises also requires that we pass robust appropriations. I made that clear at

last week's briefing with the Biden officials.

I will say it again: Providing for the common defense is a fundamental governing responsibility. It is not extra credit.

Our Democratic colleagues will not receive a goody bag of domestic spending in exchange for fulfilling this solemn duty.

TRIBUTE TO RICHARD BURR

Mr. President, now on an entirely different matter, I would like to begin my tribute to another of our distinguished departing colleagues by quoting his own words from a letter written back in 2009. Here is what he said:

Dear Mr. and Mrs. Carver, Thank you for entrusting me with [your son's] memorial bracelet at the Asheville Veterans Day Ceremony. I wish there had been more time to talk that day. I returned to Washington, DC with the bracelet on my wrist . . . [your son's] unrelenting courage and zeal for life are what I will think of when I look at his name on my wrist. Rest assured that I will wear [this] bracelet forever.

A quiet gesture, unheralded and understated, but leaving hugely impactful ripples in its wake. A perfect case study of Senator RICHARD BURR.

At first glance, it might appear to the uninitiated that our distinguished friend is a man of contrasts or contradictions. For example, this impeccably dressed Southern gentleman has been known to drive around town in a rickety old Volkswagen. I think that our dear departed colleague John McCain once called it "an assault on the senses"; or take the fact that when most of us were happy enough to finish high school as either a successful jock or a successful student, Richard was both a standout scholarship football player and winner of the science fair; or consider that our unflappable, calm colleague with an easy manner—almost casual, really—has been one of this Chamber's most dogged legislators and most relentless champions across a whole array of critically important causes.

That special bracelet bearing Army Chief Warrant Officer Mitch Carver's name isn't just a comfort to one Gold Star family; it is an outward sign of RICHARD BURR's entire approach to his job: supporting service, honoring sacrifice, and making life better for folks in North Carolina and across the Nation.

For 5 years, RICHARD's colleagues tasked him with helming the Intelligence Committee. Some of this institution's most sensitive and critical responsibilities wound up right in his lap.

But Senators on both sides knew that RICHARD's thoughtfulness, fairmindedness, and discretion tailor-made made him for the role—no showy victory laps, no braggy press tours. He led with the serious, collegial, and patriotic tone that the issues actually demanded.

This quiet competence has been part of the RICHARD BURR brand from the very beginning. As a backbench House

freshman, RICHARD spearheaded massive reforms of the Food and Drug Administration. Long before COVID-19, he had a personal passion for helping to equip BARDA and other pandemic preparedness initiatives.

RICHARD has authored transformational legislation that disability advocates called the most important advance for their cause in a quarter century. He reached across the aisle to help deliver justice for victims of decades-old hate crimes. He drove bipartisan consensus on a measure that has helped save students and families near \$100 billion in loan payments.

In a situation folks in my own State know well, he stepped up to help tobacco farmers transition to succeed in a freer market, and as the ranking member of the Veterans' Affairs Committee, RICHARD delivered much needed relief to men and women who served our Nation with the Veterans Choice Act of 2014.

It is truly amazing what you can accomplish when you are willing to be patient, keep an even keel, share some credit—oh, and occasionally, even jump out a window. Let me explain. This is creative problem-solving in action.

Back during sequestration, when staffing shortages had closed some of the normal entrances and exits around the Capitol campus, our friend found himself in the Russell Building while the only open exit was all the way over in Dirksen. Rather than lengthen his commute, this ever-pragmatic man of mystery found the lowest window around, grabbed his dry cleaning, shimmed out, and hopped right down to the sidewalk.

Now the day is fast approaching when our colleague will escape from this institution for good, but RICHARD's remarkable legacy here will endure—whether that has meant using his charm and judgment of character to disarm committee witnesses and get to the bottom of complex issues under investigation or using his fluency in House-speak to translate key happenings for us, his colleagues over here in the upper Chamber.

And I would be remiss if I didn't mention how RICHARD excels at turning up the pressure to break a stalemate. You see, if an issue is dragging out and no solution appears forthcoming, unless RICHARD was the point person himself, he would frequently just threaten to leave town altogether until things got worked out.

We are talking about a colleague who is famous for keeping closer tabs on the Senate's weekly wrapup proceedings than just about anyone.

In fact, as I understand it, RICHARD's team became so famous for tracking the timing of final votes so closely that some other offices would try calling Team Burr for the scoop before they would even try the cloakroom.

Now, with RICHARD's seemingly laid-back demeanor, you might assume our friend was just eager to get out to the beach or hit the links, but that would

be another one of those deceptive appearances. The truth is, RICHARD didn't become an expert at speedy getaways because he wanted to shortchange his duties. In fact, it was just the opposite. Even as devoted a public servant as Senator BURR is, he knew that, in the final analysis, another set of duties was even more essential.

When our colleague was first elected to the House in 1994, he and his beloved wife Brooke had two young sons, and Brooke was carving out her own tremendously successful career in business.

So our friend was bound and determined that serving the people of North Carolina would not mean skimping on his proudest job of all—as father to Tyler and William, and now as a grandfather as well.

Through decades of committed service, he has found a way to do it all. But even so, I know RICHARD is excited to make up for lost time.

So we thank our colleague for his outstanding work for our country. And I have it on good authority that our friend has a favorite catch phrase that he has used to bid farewell to his office after they have spent a long day doing good work. So, RICHARD, as you like to say, "Dilly dilly."

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PADILLA). Without objection, it is so ordered.

BORDER SECURITY

Mr. THUNE. Mr. President, last Tuesday, President Biden was asked why he wasn't taking the opportunity to visit the border while traveling to Arizona. His reply? "Because there [is a] more important [thing] going on."

"[A] more important [thing] going on."

Mr. President, no offense to new investment, but if President Biden thinks that visiting a plant to celebrate new investment is more important than the security and the humanitarian crises raging at our southern border, then his priorities are seriously out of order, but, of course, we already knew that.

This is hardly the first time the President has made it clear what he thinks of the crisis at our southern border—as just an annoying distraction from what he would rather be doing as President. In fact, he has shown a remarkable ability throughout his Presidency to ignore or minimize crises that he isn't interested in dealing with.

"There [is a] more important [thing] going on."

I venture to suggest that for overwhelmed border communities struggling with an apparently never-ending influx of illegal immigration, there isn't anything—anything—more important going on, and the President's

trivializing of our border crisis is a serious betrayal of the responsibility he owes to these Americans and to all Americans.

The situation at our southern border is out of control and has been that way for most of the President's administration. Over this past weekend alone, Customs and Border Protection encountered more than 16,000 individuals attempting to cross our southern border illegally. That is an average of 8,000 per day—higher than the daily average in May, which posted the highest number of attempted illegal crossings ever recorded. October saw a staggering 230,678 attempted illegal crossings along our southern border.

All told, U.S. Customs and Border Protection encountered nearly 2.4 million individuals attempting to cross our southern border illegally during fiscal year 2022. That is the highest number ever recorded, exceeding the previous record set the year before by roughly 640,000. Of course, these numbers just refer to individuals the Border Patrol actually apprehended. There have also been almost 1 million known “got-aways” over the past 2 fiscal years and an untold number of unknown “got-aways.”

President Biden's comment doesn't just trivialize the scope of this crisis; it also trivializes the human misery that has resulted. At least 853 migrants died crossing the southern border in fiscal year 2022—the highest number ever recorded. It is hard to imagine that that number wouldn't have been smaller if President Biden had gotten serious about addressing this border crisis instead of inviting illegal immigration with his lax border policies.

I mentioned overwhelmed border communities. I should also mention the incredible strain the past 2 years have placed on the Border Patrol, which has been forced to divert agents from border enforcement to the overwhelmed humanitarian mission. Then, of course, there is the very real danger represented by unchecked illegal immigration, including the risk of dangerous individuals entering our country undetected and the potential for increased drug trafficking.

Illegal drugs are flowing across our southern border and contributing to violent crime not just in border communities but in communities around the Nation. And that is not even to mention our Nation's fentanyl crisis, which is being fed by drugs that are trafficked across—where else?—our southern border. Our current border crisis is an open invitation to increased illegal drug activity, but the President has more important places to be than the southern border even though, I should point out, he has never actually visited the southern border—not once. The closest he got was literally driving by the border on the way to a campaign rally in 2008.

For border communities and strained Border Patrol agents, I venture to say that there is nothing more important

than getting our Nation's border crisis under control, but I guess we will just have to keep waiting. After all, the President has more important things to do.

INFLATION

Mr. President, in other tone-deaf comments from the Biden administration last week, White House Chief of Staff Ron Klain said:

Fiscal responsibility is very important to us in the Biden administration. We're very well aware that we have to stay within our means economically. I think . . . you see that in everything we've tried to do these past two years.

That was from the President's Chief of Staff.

Well, when I read that, I wasn't sure whether to laugh or cry or just be angry on behalf of the millions of Americans who are currently suffering as a result of the Democrats' lack of fiscal responsibility over the past 2 years. We are currently in the midst of the worst inflation crisis in 40 years. My daughters, who are married and have their own children now, weren't even alive the last time inflation was this bad.

November's inflation numbers came out this morning, and they just confirmed what we already know: that we are still very much in the midst of this crisis. Currently, inflation is up 13.8 percent since January of 2021, when President Biden took office. Even if our inflation crisis ended tomorrow, the inflation we have already experienced will cost the average household more than \$9,000 over the next 12 months—\$9,000. Now, for a lot of families, that is the difference between prosperity and just getting by. For many others, it is the difference between just getting by and not being able to get by at all.

How did we get here? Well, in substantial part, it is thanks to the President's and Democrats' fiscal irresponsibility.

When Democrats took office in January 2021, Congress had just passed a fifth bipartisan COVID bill that met essentially all of the current pressing COVID needs, but the Democrats just wanted to keep spending. So, despite being warned that the size of the package they were contemplating risked overheating our economy, under the guise of COVID relief, the Democrats passed a massive and partisan \$1.9 trillion spending bill filled with unnecessary spending and payoffs to the Democrats' interest groups. The economy, not surprisingly, overheated as a result. Inflation began climbing and climbing and climbing again.

But what is almost worse and what makes the White House's claim that they care about fiscal responsibility so incredibly ludicrous is what the Democrats and the President did next. Even as it became clear that their massive spending spree had helped set off a serious inflation problem, the Democrats and the President kept pushing for more spending. In fact, their goal, which they were, fortunately, pre-

vented from achieving, was passing another massive spending spree in the neighborhood of \$5 trillion.

Even after that plan was foiled, the Democrats and the President kept right on pursuing more fiscally irresponsible legislation. In August, the Democrats passed legislation, their so-called Inflation Reduction Act—again filled with hundreds of billions of dollars in Green New Deal spending, partially financed by tax hikes that will raise energy prices and slow job creation.

Democrats tried to clothe the bill in an aura of fiscal responsibility by claiming—dubiously, I might add—that it would reduce the deficit by \$300 billion.

Do you want to know how long that purported deficit reduction lasted once the bill was signed into law? Eight days. Eight days. That is how long it took for President Biden to completely wipe out any deficit reduction of the bill by implementing his massive student loan giveaway—a giveaway that not only wipes out any possible deficit reduction but will also, according to the Committee for a Responsible Federal Budget, “meaningfully boost inflation.” Yet we are supposed to believe that the Biden administration values fiscal responsibility.

When it comes to fiscal responsibility, the Biden administration has demonstrated that it could not care less. The Biden administration is interested in implementing the big-government priorities of the far left, no matter how much they cost. And, unfortunately, the American people are the ones paying the price.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. CAPITO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO DAVID MCKINLEY

Mrs. CAPITO. Mr. President, today, I rise to really honor a seventh-generation West Virginian, a lifelong Wheeling native, a devoted husband, father, grandfather, and public servant, my very good friend, Congressman DAVID MCKINLEY.

DAVID and I have known each other for a very long time. He and Mary, his wife, have extended steadfast love and friendship to my entire family but, in particular, to my parents during some good times and bad. Those friendships extended for many, many years and never wavered.

From when DAVID was a delegate in the West Virginia State House to when he chaired the West Virginia Republican Party to later when he became my colleague and our colleague in the U.S. House of Representatives, we worked together a lot.

DAVID got a slot on the Energy and Commerce Committee during his very

first year in Washington. Now, I had already been there 10 years and still hadn't made it to the Energy and Commerce Committee, so I was a little bit jealous of DAVID then. But, wow, did he really do tremendous work on that committee.

Although time has gone by, DAVID's passion and his love for West Virginia have never wavered, and his pragmatic service has never changed.

As the only licensed engineer in the House of Representatives—and if you didn't know that, DAVID is quick to tell you—his unique and thoughtful analysis to challenges has helped his constituents immensely, and it certainly made West Virginia a better place. And, by the way, he has helped me understand some very complex issues.

In fact, I don't think there are as many Members of Congress who have held townhall meetings on the Megabus to DC as DAVID has to meet with our constituents. But DAVID never misses an opportunity to have a conversation.

DAVID has played an essential role in advancing legislation critical to infrastructure, life-altering hearing aid devices, and securing the pensions and retirement benefits that our West Virginia coal miners rely on.

DAVID is, and always will be, a problem-solver, and he brought thoughtful solutions to the needs of our fellow West Virginians every single day with unrelenting passion.

I have mentioned passion many times already in this short speech, but "passion" is a very fitting word because DAVID does not do anything halfway. He is passionate about our State of West Virginia. He is passionate about West Virginia University's football team and all sports teams. And he is always there ready to cheer on the Mountaineers.

He is passionate about his hometown of Wheeling, and he is a passionate defender of those Northern Panhandlers, which is what I am as well. He is passionate about the men and women who have worked to power our Nation and the solutions to our future.

But there is another component to DAVID's public service and his life that we must stop and recognize, and that is of his beloved wife, Mary.

Mary has truly been a partner to DAVID and his work to make West Virginia stronger and healthier. Mary received her masters of science degree in nursing from none other than West Virginia University, has had an exceptional career as a nurse at Ohio Valley Medical Center, and is the director of education and professional development at the Ohio Valley Health Services and Education Corporation in Wheeling.

But do you know what? Mary has a national presence as well. Mary served as the national president of the American Association of Critical Care Nurses. She epitomizes West Virginia's warmth and friendliness, and we thank her for her service to our State as well.

As I reflect on Congressman MCKINLEY's Federal work and accomplish-

ments, perhaps no other area has seen his trademark tireless devotion than protecting and promoting the hard work and values embodied by our West Virginia coal miners.

DAVID has fought tooth and nail for our coal miners' livelihoods, for their healthcare, and for their ability to power this Nation but sometimes get taken for granted when we look at the sacrifices that they have made.

As DAVID turns the page on this chapter of his life, I am sure this is not the last that we will hear from him. I certainly hope not. In retirement, DAVID and Mary will be able to enjoy time spent with their four children and six grandchildren.

With DAVID's time in Congress coming to a close, his thoughtful approach to problems and his fearless advocacy on behalf of West Virginians will be missed in this town, will be missed in our country, but certainly can never be erased from our State and our country's history. But his contributions and the example he set will continue to stay with us always.

I admire DAVID's tenacity and divisiveness. You really never have to wonder what DAVID MCKINLEY thinks on a certain topic. I like that. I like that. For that, we should all be grateful. I know that I and West Virginians are certainly grateful.

So, DAVID, thank you for your service. I know he is not coming back into town until tomorrow, but I wanted to get this on the record. The difference that you have made in our State that we both love, and the friendship and counsel that you have provided me over the years is much appreciated.

So when I see DAVID and we have a conversation and he sends me on my way, he has a trademark saying that he always says to me, so I am going to say it back to him today. DAVID, I will say this to you: Go get 'em, kid.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

UNANIMOUS CONSENT REQUEST—S. 5941

Mr. KENNEDY. Mr. President, I want to talk a few minutes about Medicare.

If I am on Medicare and I go to my physician for an earache and my physician treats me, hopefully successfully, my physician then does not turn around and send a bill to Medicare that says: For services rendered for an earache. What my physician does is fill out a form that has a bunch of codes on it, and my physician fills out the form with the code for an earache.

Now, what does that mean? That means that when that form with a code for an earache goes to Washington, the administrators at Medicare look up the code for an earache, and they know then how much they are going to pay my physician for treating an earache.

As you can imagine, there are thousands of codes—literally thousands of codes—because there are thousands of diagnoses for which our citizens on Medicare seek treatment every year.

So, every year, Medicare puts out a fee schedule, and in its essential form

this is just a schedule listing all of the codes for all the different illnesses that doctors who treat Medicare patients bill for. And these codes, this fee schedule, are used to reimburse doctors and hospitals. Well, of course, it is not as simple as that, and the way that the codes are put together and the fee schedule is put together are not exactly a model of clarity. And we need to do better, and, hopefully, someday we will do better. But, at the moment, we have to deal with reality as it is.

Now, in setting a code—or how much Medicare is going to pay my doctor for treating my earache under Medicare—and in putting together the fee schedule, which is put together by the Centers for Medicare and Medicaid Services, which I will just refer to it as "Medicare"—Medicare takes all kinds of factors into consideration in deciding how much to pay my doctor for an earache. Medicare looks at things like the diagnosis, of course. Medicare will pay less for an earache than for heart surgery. Medicare looks at the procedure that the doctor had to use.

Medicare looks at the location. If I go to my doctor in Baton Rouge, where my primary care physician is located, the cost of living in Baton Rouge is lower than the cost of living in New York. So the fee for an earache paid by Medicare to my Baton Rouge physician is going to be lower than that paid to a physician in New York.

The fee schedule looks at time and expenses of the doctor. The fee schedule that Medicare puts together looks at things like the cost of maintaining a practice: rent, supplies, support personnel. The fee schedule tries to take into consideration the cost of medical malpractice.

So the point is that a doctor treating me in Baton Rouge for an earache will not receive the same fee that a doctor, for example, in New York will receive for treating a patient there under Medicare for an earache.

But every year Medicare gets together and they send out a new fee schedule, and it is a very complicated process. And that process is complicated by the fact of what we call budget neutrality. Under current law, the Centers for Medicare and Medicaid Services—or Medicare, as I have been calling it—is required to make budget neutrality adjustments to the payment schedule. And the technical definition is—I will read it to you, and then I will explain it: Medicare is required to make Medicare physician payment schedule adjustments whenever changes in relative value units generate a payment increase or decrease of \$200 million.

I told you it was complicated.

Now, what does that mean? That means that Medicare is statutorily required—required by Congress—to maintain budget neutrality, and this means that, as certain codes increase in value, in order to maintain budget neutrality, Medicare has to reduce payment for other codes. Budget neutrality is also

much more complicated than I just explained it, but those are the basic rules.

Now, here is the problem. The Centers for Medicare and Medicaid Services—CMS, or Medicare, as I have been referring to it—has just released their 2023 physician fee schedule. The new fee schedule has come out, and because of the formula and because of the budget neutrality requirement, CMS is proposing—or Medicare—a 4.5-percent across-the-board reduction in Medicare payments. So every payment is going to be cut 4.5 percent across the board.

Well, it gets even more difficult. Due to the \$1.9 trillion deficit increase caused by the American Rescue Plan and under our budget rules, pay-go sequestration is going to be triggered by the American Rescue Plan, and that is going to require an additional 4-percent reduction across the board in payments to physicians and hospitals.

So unless we do something, every physician who treats a patient who is on Medicare—it doesn't matter what for—is going to be paid 8.5 percent less—in the middle of raging inflation, in the middle of not only doctor shortages but staff shortages as well.

Now, this is not the first time we have had this problem. We had it last year, and we had it the year before. We solved it then, but we need to solve it today. And you do not have to be a senior at Cal Tech to figure out that if you cut physicians' fees for every different diagnosis for which Americans seek treatment from a Medicare physician by 8.5 percent, physicians are going to have to either make it up somewhere or stop seeing Medicare patients. So all of a sudden your doctor under Medicare is not taking any more Medicare patients. We don't want that.

Not only that, but the Medicare fee schedule is looked to by private insurance companies when they determine how much to pay physicians under their insurance plans. That is the problem.

Here is what my bill would do to solve it. My bill would freeze the current fee schedule in this sense—not *per se* but indirectly. My bill would keep physician reimbursement at existing levels. So the amount that doctors are paid today for that earache would be the same next year.

My bill would pause the pay-go cuts until 2024. So, in effect, my bill would prevent, next year, an 8.5-percent reduction across the board to physician fees.

Now, I know what you are thinking, Mr. President. You are thinking: Well, I have heard speeches by KENNEDY before about controlling the cost of spending in government and the rate of growth. So here he is suggesting that we spend more.

And it is true that this bill would replace the fee schedule cuts by adding money to the Medicare budget. The pay-go cuts would just be postponed. But I have a pay-for. I am not asking this Congress just to add spending and

go borrow the money and put us further in debt. I have a way to pay for it.

As you know, we sent—"we," meaning the U.S. Congress, sent—a lot of money to our healthcare delivery system during COVID to help patients, or, rather, to help physicians and hospitals deal with our healthcare crisis. We sent a lot of that money through what is called the Provider Relief Fund. These are dollars that were sent out to the hospitals and the doctors to help them get through the COVID pandemic.

Our doctors and hospitals didn't use all that money. They have returned some of it, believe it or not. As of February of this year, a few months ago, they had returned \$9.8 billion. And I suspect, by now, they have returned, as best as we can tell from CBO, about \$15 billion. So we have \$15 billion in our healthcare budget that is not accounted for in terms of how it would be spent.

My bill would cost \$2.25 billion. I would propose, Mr. President, that we pay for that \$2.25 billion and take it out of what I believe is the \$15 billion pot of money that was returned to the Provider Relief Fund. So I have a problem, I have a solution, and I have a way to pay for it without us having to spend money we don't have and thereby borrow it.

So, Mr. President, as if in legislative session, I ask unanimous consent that the Committee on Finance be discharged from further consideration of S. 5194.

Let me stop just for a moment, Mr. President. We have to solve this problem. We are going to solve this problem. We solved it last year, and we solved it the year before. Nobody in this body wants to throw people off Medicare.

Now, we are having trouble putting together a budget. I don't know how that movie is going to end. It may end with an omnibus. It may end with a continuing resolution, where we will wait for a new Congress. But we need to solve this problem now and not make it contingent on an omnibus and not make it contingent upon a continuing resolution. We need to solve it now for the American people who depend on Medicare, and that is what my bill does.

We can continue to fight over the budget. We can continue to fight over the CR. But we are going to solve this problem today with a pay-for, with my bill.

So I repeat, as if in legislative session, I ask unanimous consent that the Committee on Finance be discharged from further consideration of S. 5194 and the Senate proceed to its immediate consideration, and I further ask that the bill be considered read a third time and passed and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there any objection?

Mr. WYDEN. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, let me say to our colleague from Louisiana that I very much agree with much of the statement he has given. I have been interested in these sensible policies with respect to providers since the days when I was codirector of the Oregon Gray Panthers. So our colleague from Louisiana is talking about important issues.

As chair of the Finance Committee, I can say that nobody on either side wants to see financial hardship for healthcare providers or disruption to the healthcare system. This is particularly important when you have got COVID, what looks like a god-awful flu, and an RSV crisis filling up the doctors' and hospitals' waiting rooms nationwide.

What I can tell my colleague from Louisiana is that, on both sides of the aisle on the Finance Committee, Democrats and Republicans have put in some long hours—long hours—discussing solutions to these physician payment issues with our colleagues in the House on both sides and the administration.

Our discussions include other critical healthcare issues. For example, I think my colleague knows that Senator CRAPO and I have been very focused on mental healthcare, making it easier for Americans to get mental healthcare when they need it.

And we are especially proud that this bipartisanship is paying off. As our colleagues may know, Senator CRAPO and I got four major provisions—four—into the commonsense gun safety law—everything from helping kids on Medicaid, behavioral health—our colleague, Senator STABENOW. So we believe strongly in writing black-letter law on a bipartisan basis.

Now, the reason I am taking the time to put this into context, it is very important that our bipartisan discussions on a yearend healthcare package continue. Time is, obviously, short.

I am just coming off two red-eye flights to Oregon in the last 4 days, and I want my colleague to know, again, I appreciate much of what he has said. I didn't come to the floor to say, Senator KENNEDY is horrible. Quite the contrary. I think he has good ideas here. Time is tight, and I am confident there is a bipartisan agreement around the corner.

I do say to my colleague, passing this proposal now, in my view, would make this process that we are part of, Senator CRAPO and I—talking to the administration, talking to the House, and doing all the things that my colleagues have a lot of experience on—passing this proposal now would make it harder to reach a bipartisan agreement on physician payments, mental health, a variety of other key kinds of issues. So I will just say, with the understanding, a, that my colleague has raised important points and, b, that Members on both sides are working towards a

shared goal on this issue, Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Louisiana.

Mr. KENNEDY. Mr. President, I appreciate my good friend Senator WYDEN's comments. And I hope he gets some sleep off that red-eye flight.

I am just going to repeat quickly what I said before.

I hope we can put together—we can't solve this problem without passing a bill. I don't know if we are going to be able to pass a bill, any kind of bill. Hopefully, before we go home for Christmas and before this Congress ends, we will be able to do the National Defense Authorization Act, which I think we are going to do this week. There will be some people objecting to the NDAA. I know that. And it will slow it down. But after they object and they get to be dramatic for a little while, we will come back and pass the bill. And then we will decide whether to do an omnibus or whether we are going to do a continuing resolution and wait for the new Congress.

But in order to solve this problem, we have got to do something now. And there are millions of Americans out there that are looking at an 8½ percent cut to Medicare when we have an 8-percent inflation. That is a 16-point swing. And those millions of people are not just physicians or nurses. They are patients who depend on Medicare for life and death.

So I hope that the chairman of Finance, who is whip smart, will consider my proposal. It would postpone the pay-go cuts of 4 percent, and it would freeze the current fee schedule. If we don't, if the new fee schedule goes into effect, we are going to have another 4½ percent cut—that is where I get the 8½ percent—and it would pay for it.

It wouldn't increase debt at all. We pay for it, very simply, as I explained. We pay for it out of the \$15 billion in the Provider Relief Fund.

And if our Finance Committee doesn't like that as a pay-for, I have another one. You can pay for it out of the Medicare Improvement Fund. It has 7.3 billion in it. Now, that is \$24 billion we have got to solve the \$2.5 billion problem so the elderly in our country can sleep tonight. So I hope my esteemed colleague will take this into consideration. And I know that he will.

The PRESIDING OFFICER. The Senator from Louisiana.

FLOOD INSURANCE

Mr. KENNEDY. Mr. President, I am going to talk for a minute about another subject: flood insurance. It doesn't do any good to offer flood insurance when people can't afford it. And that is what FEMA is doing right now.

We all know—or most people know—that you can't buy flood insurance really in the private market. I mean, you can, but for the most part, you can't. And if your house floods and you have homeowners insurance, don't

make the mistake of thinking your homeowners insurance covers it because it doesn't. You have got to go buy special flood insurance.

And we have had this problem for a while, and the Federal Government addressed it by creating the National Flood Insurance Program. We call it, as you know, NFIP. About 5 million people who wouldn't be insured for flood otherwise are members of the National Flood Insurance Program. They don't get it for free. They pay for the flood insurance, and they pay dearly.

My State, Louisiana, has 5,000 people out of 5 million who depend on the National Flood Insurance Program. We in Louisiana have the highest participation rate in the country, bar none. And despite what some people may think, my people who are buying flood insurance, they are not multimillionaires; they are working people. They are people who get up every day and go to work, and they obey the law and pay their taxes. They try to do the right thing by their children. They live paycheck to paycheck. These aren't multimillionaires paying for this flood insurance. And they are not paying for the flood insurance on mansions on the beach. We don't have those in Louisiana. These are working people.

Now, for my people and for most Americans who carry flood insurance, their home is their biggest investment. It is the biggest investment they will ever make. It is the most money they will ever spend at one time. And so they want to protect their investment. And they need flood insurance to do that. And we in the Federal Government solved the problem when we created the National Flood Insurance Program.

Now, last year, FEMA, which is under the executive branch, of course—we all know what FEMA is—FEMA rolled out the most significant change in history in the way the National Flood Insurance Program calculates the cost of flood insurance—the most important change in history—and they didn't ask Congress for our input. They just did it.

They went out and hired a consultant who created a new algorithm. And this algorithm, supposedly, says FEMA, can see the future. It can look out 35 years and tell whether your home is going to flood and when it is going to flood. And they cannot only look at a particular area, they say this algorithm is so good that it can look at your specific property and tell whether it is going to flood and assess the risk. Man, I want a dozen of those.

FEMA calls this Risk Rating 2.0. There is just one problem: FEMA won't tell any of us in the U.S. Congress, much less the American people, how this algorithm works. I asked them to give me the algorithm, and I would pay, at my expense—at my expense—to have somebody evaluate it. FEMA said, if I showed it to you, KENNEDY, I would have to kill you. They won't show it to us.

But yet when I asked them about it—I have asked them in committees—FEMA says, Risk Rating 2.0—that is what they call it—they say it is fairer, and they say it is based on the value of your home and the unique flood risk for that property. Once again, man, FEMA is clairvoyant. This algorithm is awesome. They can look out 35 years; they just won't tell us how they do it.

There is no transparency on this grading 2.0. People have absolutely no idea. Members of the U.S. Congress have no idea, how this algorithm works and how they come up with the specific price for every home in America. But I will tell you what we do know: All the prices have gone up.

Let me give you an example. In Louisiana, we have a lot of levees. A lot of those levees are helped paid for with Americans' taxpayer money. And we are grateful to our neighbors and America for helping us out. But a lot of those levees are paid for by Louisiana citizens. We have asked: How does this algorithm, in raising these prices, take into account the levees? Are we getting credit for our levees? And they say: Sure. And I say: Can you show me? And they say: If I showed you, I would have to kill you; this is a secret algorithm.

No transparency. None.

Now, in the past, FEMA has already recognized levees and their importance. And they say they are doing it now under Risk Rating 2.0. But they won't show us how. And our levees work. Our levees work.

Last year, we had a number of storms. We had one that came through New Orleans. We have a levee system around New Orleans. It held. Thank you, American taxpayers. But we don't know how FEMA takes that into account. They say they do. They say: Trust us.

You know, every now and then, I play poker with friends. And they are all good friends. I trust them. But you know what, every time I play poker, every hand, I cut the cards. It is not a matter of friendship or trust. That is just the way it is supposed to be: transparency.

Now, this isn't just my opinion. There was an interview in the Times-Picayune, Mr. Dwayne Bourgeois. Mr. Bourgeois knows what he is talking about. He is the executive director of the North Lafourche Conservation, Levee, and Drainage District in Louisiana. He is an expert on floodwater drainage and levees. This is what he said about the Risk Rating 2.0:

I [just] can't figure out why some people get this minimum result and these other people get the maximum result. I can't tell you what the secret sauce is to get to that rate.

And the reason he can't is because FEMA will not tell us what the secret sauce is. What is the effect of this secret sauce? FEMA says it is going to make everything fairer. I know this much: It is going to make everything more expensive.

According to FEMA's estimates, 80 percent of the people who have flood

insurance and have to have flood insurance in Louisiana—in part because the mortgage company requires it—are going to see their rates go up.

The likely average full-risk premium for a home in Louisiana under this new secret sauce is \$1,700. Under the old system, it was \$766. That is a 122-percent increase because of this algorithm, this secret sauce, which FEMA will not let us see.

My people can't afford this. And the reality is, people are already dropping flood insurance. They are saying: We just can't pay for it. Something has to give. We have inflation at 8 percent or my rent has gone up. Food has gone up. Gas has gone up. We just can't afford it.

The number of flood insurance policies in eight of my parishes—we call our counties parishes—in eight of my parishes or counties, the number of policies has dropped from 290,000 in October 2021 to 267,000 in November of 2022, and it has fallen.

So that is 22,000 people—almost 23,000—out of only 8 parishes or counties who have had to give up their flood insurance.

Now, it is not just Louisiana, Mr. President. You may be having the problem in California.

The Associated Press estimates that 1 million fewer Americans will be able to afford to buy flood insurance by the end of the decade because of Risk Rating 2.0, their algorithm, their secret sauce. And E&E News has identified 425,000 policyholders across the country who have already discontinued coverage.

What does that mean for each State? Well, for example, cancellations of flood insurance because they can't afford it. Eleven percent of the people of California who were buying flood insurance can't afford it anymore, they have dropped it; 11 percent of the policyholders in Texas; 9.6 percent in Florida; in Virginia, North Carolina, Georgia, and South Carolina, 8 percent.

Now, this is a disaster waiting to happen. And I am all for a fair system, but I will tell you what I am not for. I am not for having a Federal Agency, without consulting the U.S. Congress, without talking to you, Mr. President, about your policyholders in California or me in Louisiana, without explaining to us how they are doing it, just unilaterally raising prices with an algorithm or their secret sauce, as I call it.

Now, Senators CASSIDY and GILLIBRAND and I have introduced a bill. It is called the Flood Insurance Pricing Transparency Act. It is a bipartisan bill. All we are asking that FEMA do is talk to us and tell us how they are coming up with these rate increases.

The American people pay the salary of the people at FEMA, and my people and your people, Mr. President, deserve to know how their policies are being priced.

And, Mr. President—Mr. President Biden, if you are listening—I hope you will pick up the phone and you will call

your FEMA Director, for whom I have great respect—I don't hate anybody—but I hope the President will call the FEMA Director here and ask him what planet he just parachuted in from and what is he thinking, raising these kinds of prices without telling the American people why.

NOMINATION OF DANA M. DOUGLAS

Mr. DURBIN. Mr. President, today, the Senate will vote to confirm Judge Dana Douglas to the U.S. Court of Appeals for the Fifth Circuit.

Born and raised in New Orleans, Judge Douglas' passion for the law and public service was inspired by her family's background in law enforcement. In particular, her mother, Ms. Ida Woodfork, served in the Orleans Parish Sheriff's Office for 30 years, and her uncle, Mr. Warren Woodfork, Sr., was the first Black superintendent of the New Orleans Police Department.

Judge Douglas earned her B.A. in social work and Black world studies at Miami University and received her J.D. from Loyola University School of Law. From there, she clerked for Judge Ivan L.R. Lemelle on the U.S. District Court for the Eastern District of Louisiana.

Judge Douglas then spent 18 years litigating, trying four cases to verdict or judgment and handling several administrative matters before State agencies. Although she worked in private practice, she also served the community for 9 years as a commissioner and then vice president of the New Orleans Civil Service Commission, a quasi-judicial body regulating the city's civil service.

Since 2019, Judge Douglas has served as a magistrate judge for the Eastern District of Louisiana. In that time, she has authored 111 reports and recommendations, all of which have been adopted in whole or in part by the district court.

Judge Douglas enjoys the strong support of Senators KENNEDY and CASSIDY, and the American Bar Association unanimously rated her as "qualified" to serve on the Fifth Circuit.

If confirmed, Judge Douglas will be the first woman of color to serve on the Fifth Circuit.

Judge Douglas' experience, qualifications, and temperament will be assets on the Fifth Circuit, and I urge my colleagues to join me in supporting her nomination.

VOTE ON DOUGLAS NOMINATION

The PRESIDING OFFICER. Under the previous order, the question is, Will the Senate advise and consent to the Douglas nomination?

Ms. SMITH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Colorado (Mr. HICKENLOOPER) is necessarily absent.

Mr. THUNE. The following Senators are necessarily absent: the Senator

from Texas (Mr. CRUZ), the Senator from Alaska (Ms. MURKOWSKI), and the Senator from Alaska (Mr. SULLIVAN).

The result was announced—yeas 65, nays 31, as follows:

[Rollcall Vote No. 388 Ex.]

YEAS—65

Baldwin	Grassley	Romney
Bennet	Hassan	Rosen
Blumenthal	Heinrich	Rounds
Blunt	Hirono	Sanders
Booker	Kaine	Schatz
Brown	Kelly	Schumer
Burr	Kennedy	Shaheen
Cantwell	King	Sinema
Capito	Klobuchar	Smith
Cardin	Leahy	Stabenow
Carper	Lujan	Tester
Casey	Manchin	Tillis
Cassidy	Markey	Toomey
Collins	Menendez	Van Hollen
Coons	Merkley	Warner
Cornyn	Murphy	Warnock
Cortez Masto	Murray	Warren
Duckworth	Ossoff	Whitehouse
Durbin	Padilla	Wicker
Feinstein	Peters	Wyden
Gillibrand	Portman	Young
Graham	Reed	

NAYS—31

Barrasso	Hawley	Paul
Blackburn	Hoeben	Risch
Boozman	Hyde-Smith	Rubio
Braun	Inhofe	Sasse
Cotton	Johnson	Scott (FL)
Cramer	Lankford	Scott (SC)
Crapo	Lee	Shelby
Daines	Lummis	Thune
Ernst	Marshall	Tuberville
Fischer	McConnell	
Hagerty	Moran	

NOT VOTING—4

Cruz	Murkowski
Hickenlooper	Sullivan

The nomination was confirmed.

The PRESIDING OFFICER (Ms. SINEMA). Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:58 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. MURPHY).

EXECUTIVE CALENDAR—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Jay Curtis Shambaugh, of Maryland, to be an Under Secretary of the Treasury.

VOTE ON SHAMBAUGH NOMINATION

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the Shambaugh nomination?

Mr. CARDIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.